

July 26, 2004

Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Via email

Re: Comments to Proposed Amendments to Regulation J
Docket No.: R-1202

Dear Governors:

Bank of America, N.A (“Bank of America”) appreciates the opportunity to comment on the proposed amendments to Regulation J issued by the Federal Reserve Board. Bank of America is one of the largest banks in the United States, processing more than 700 million items per month.

Bank of America has actively participated in the formulation of comment letters on the Proposed Amendments being submitted by The Clearing House Association L.L.C. (“The Clearing House”) and the group of financial services industry organizations and technology companies (hereafter the “Industry Group”) that has submitted a joint comment letter. We fully support the comments of The Clearing House and the Industry Group and, accordingly, we have limited our comments in this letter to one aspect of the proposed amendments that we believe deserves particular consideration.

We believe that the proposed indemnity provisions of §210.5(a)(5)(v) are overly broad and, as a result, unfairly allocate losses to parties that have no opportunity to avoid or mitigate them. Section 210.5(a)(5)(v) provides that a sender of an electronic item that is **not** a representation of a substitute check agrees to indemnify a Reserve Bank from any loss it suffers as a result of giving an indemnity under §210.6(b)(3)(ii). Section 210.6(b)(3)(ii), in turn, provides that the Reserve Bank that sends an electronic item indemnifies its transferee from any losses the bank incurs under §229.53 “for an indemnity that the bank was required to make under §229.53 in connection with a substitute check later created from the electronic check.”

We do not believe that fairness or other public policy interests are served by shifting all losses for breach of substitute check warranties from the reconverting banks that created those substitute checks to banks earlier in the chain, without considering the cause of those losses.

For example, a sending bank may provide the Reserve Bank with a good image of an original check, and the Reserve Bank or a later reconverting bank inadvertently alters or ruins that image and prints a substitute check with a bad image. As another example, after the sending bank sends a check image to the Reserve Bank, multiple substitute checks from that one image are created by the Reserve Bank or a later reconverting bank and are presented to the paying bank. In both these examples, the reconverting bank should be responsible under the Check 21 Act warranties, without recourse to the sending bank.

In these cases, we believe that fairness mandates that the loss for breach of a substitute check warranty be borne by the reconverting bank that breached the warranty. The Reserve Bank should not have a claim against the sender of the related electronic item unless it can assert a claim against the sending bank based upon a specific warranty given concerning the electronic item (§210.5(a)(4)). Therefore, we urge the Board to adopt the changes to the proposed amendments suggested by either The Clearing House or the Industry Group to address this situation.

Bank of America appreciates the opportunity to submit these comments and would be pleased to discuss any of the points raised in this letter in more detail. Should you have any questions, please contact me at (704) 386-5526.

Sincerely,

Jeanette Hait Blanco
Assistant General Counsel
NC1-002-29-01
704-386-5526